

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KENNETH T. MEYERS,

Plaintiff,

-v-

1:23-CV-173

DONNA BECKER *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

KENNETH T. MYERS

Plaintiff, Pro Se

18604

Schoharie County Jail

P.O. Box 159

Howes Cave, NY 12092

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On February 8, 2023, *pro se* plaintiff Kenneth T. Meyers (“plaintiff”) filed this action alleging, *inter alia*, that one of the named defendants violated his civil rights by making false statements about him in order to receive public assistance. Dkt. No 1. This action was initially closed because plaintiff failed to pay the filing fee or file an application to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3. Thereafter, plaintiff filed an IFP Application, Dkt.

No. 5, along with the inmate authorization form and prisoner trust fund account statement required of incarcerated litigants, Dkt. Nos. 7, 8.

On April 5, 2023, U.S. Magistrate Judge Christian F. Hummel granted plaintiff's IFP Application for the purpose of filing and advised by Report & Recommendation ("R&R") that plaintiff's complaint be dismissed with leave to amend. Dkt. No. 9. Judge Hummel recommended that plaintiff be given thirty days in which to file an amended pleading. *Id.* Plaintiff did not file objections to this R&R. Instead, plaintiff skipped ahead to the next step in the process: he submitted an amended complaint for review. Dkt. No. 10.

On April 25, 2023, this Court adopted Judge Hummel's R&R, dismissed plaintiff's original complaint without prejudice, and referred plaintiff's newly filed amended complaint back to Judge Hummel for an initial review of its sufficiency. Dkt. No. 11. Thereafter, Judge Hummel advised by R&R that plaintiff's amended complaint also be dismissed. Dkt. No. 12.

In particular, Judge Hummel recommended that (1) plaintiff's claims against Bryanna Folk and (2) plaintiff's official-capacity claims against Donna Becker be dismissed *with* prejudice. Dkt. No. 12. However, Judge Hummel's R&R recommended that plaintiff's individual-capacity claims against Donna Becker be dismissed *without* prejudice and with leave to amend. *Id.*

Plaintiff has not filed objections to this R&R, and the time period in which to do so has expired. *See* Dkt. No. 12. Upon review for clear error, the R&R will be accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's amended complaint is DISMISSED;
3. Plaintiff's claims against Bryanna Folk are DISMISSED WITH PREJUDICE;
4. Plaintiff's official-capacity claims against Donna Becker are DISMISSED WITH PREJUDICE;
5. The Clerk is directed to TERMINATE Bryanna Folk and Schoharie County Social Services¹ as a defendants in this action;
6. Plaintiff's individual-capacity claims against Donna Becker are DISMISSED without prejudice and with leave to amend;
7. Plaintiff shall have thirty days in which to file a second amended complaint that conforms with the instructions set forth in Judge Hummel's May 31, 2023 Report & Recommendation;

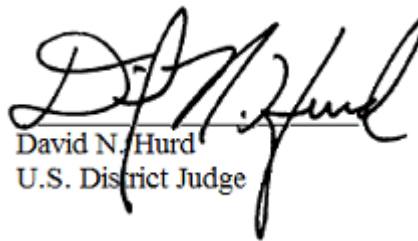
¹ As Judge Hummel noted, plaintiff's official-capacity claims against Donna Becker are tantamount to claims against the municipal entity itself. Because plaintiff's official-capacity claims will be dismissed with prejudice, the municipal entity is no longer an appropriate named defendant, either.

8. If plaintiff files a second amended complaint within the 30-day time period, the matter shall be REFERRED to Judge Hummel for review; and

9. If plaintiff does not file a second amended complaint within the 30-day time period, the Clerk of the Court is directed to close this action without further Order of this Court.

IT IS SO ORDERED.

Dated: June 27, 2023
Utica, New York.



David N. Hurd
U.S. District Judge